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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,466	01/28/2004	Charles Cobb	AFT0003	3625

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HOGAN & HARTSON LLP  
ONE TABOR CENTER, SUITE 1500  
1200 SEVENTEENTH ST  
DENVER, CO 80202

EXAMINER

FERNANDEZ, SUSAN EMILY

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/767,466

Applicant(s)

COBB, CHARLES

Examiner

Susan E. Fernandez

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 9/21/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 102 and 103 rejections over the Barendse reference.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

### ATTACHMENT TO ADVISORY ACTION

The response filed September 21, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

The amendment filed September 21, 2006, has not been entered since the new language in the proposed amendment requires consultation of the specification to confirm support for the new language. Specifically, this is in reference to the inclusion of the phrase “consisting essentially of...” in claim 5, and new claims 21 and 22. Furthermore, the amendment would require a new search since claim 5 previously did not require an enzyme formulation “consisting essentially of...” dry enzymes, nor did the claims previously require that the enzyme composition be combined with wheat bran. Therefore, denial of entry of the proposed amendment is proper at this after-final stage of prosecution.

To the extent the applicant's arguments are applicable to the claims as pending, it does not demonstrate error for the reasons of record. With respect to the arguments concerning the 35 U.S.C. §112, first paragraph rejection of claims 11-14, it is respectfully noted that the purported support for the claim language, page 10, paragraph [0045], teaches an enzyme formulation containing dried *Trichoderma viride* fermentation extract, and not that the enzymes in the enzyme formulation are “adapted to be applied to the ruminant feed in a dry state.” Paragraph [0045] does not teach that the dry enzyme formulation is adapted to be in a dry state when applied to ruminant feed. Though the specification teaches dry enzyme formulations, the

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specification does not teach that these dry enzyme formulations or the enzymes present in these formulations are “adapted to be applied to ruminant feed in a dry state.”

With respect to applicant’s arguments concerning the 35 U.S.C. §102(b) rejection of claims 11 and 13, it is respectfully noted that claims 11 and 13 are drawn to compositions, not methods as asserted in the arguments. Thus, the dried composition obtained after treatment of food with enzymes anticipates the claims, as any composition comprising dry exogenous phytase and dry cellulase can be considered a composition comprising enzymes “adapted to be applied to the ruminant feed in a dry state.”

The arguments indicating that the Barendse reference does not teach a composition “consisting essentially of” the dry exogenous cellulase and dry exogenous are convincing. Thus, rejections over the Barendse reference are withdrawn.

In the applicant’s arguments concerning the §103 rejection of the claims over Maenz and other references (Vanderbeke, Winthrop, Mantha, Tobey, Jr., Nielsen, Cobb), applicant indicates that one skilled in the art would know that if one were to modify Maenz to apply dry enzymes to the feed, and then feed the dry enzyme/feed mixture to animals, predigestion of the phytates to inorganic phosphate would not occur. However, it is respectfully noted that the dry enzymes can be added to the feed, and afterwards or concurrently, the solvent mixture comprising water and water immiscible organic solvent is added to the feed and dry enzymes, which would lead to the predigestion of the phytates to inorganic phosphate. The claims under examination do not prohibit the addition of a liquid to the feed or the feed-enzyme mixture, and therefore do not prohibit that a slurry can be produced comprising the feed and the enzymes. Moreover, the

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claims do not recite that the dry phytate and dry cellulase are added to dry feed, or that following this addition, no solution is added prior to feeding this dry mixture to ruminants.

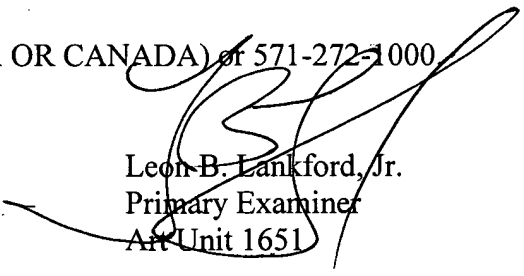
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan E. Fernandez whose telephone number is (571) 272-3444. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan E. Fernandez  
Assistant Examiner  
Art Unit 1651

  
Leon B. Lankford, Jr.  
Primary Examiner  
Art Unit 1651

sef